

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FILED  
IN CLERKS OFFICE

2004 MAY 24 P 4:52

U.S. DISTRICT COURT  
DISTRICT OF MASS.

Case No. 04-10738 PBS

EBEN ALEXANDER, III, M.D.

Plaintiff,

v.

BRIGHAM AND WOMEN'S PHYSICIANS  
ORGANIZATION, INC., successor to  
Brigham Surgical Group Foundation, Inc.,  
BOSTON NEUROSURGICAL FOUNDATION  
INC., BRIGHAM SURGICAL GROUP  
FOUNDATION, INC. DEFERRED  
COMPENSATION PLAN, BRIGHAM  
SURGICAL GROUP FOUNDATION, INC.  
FACULTY RETIREMENT BENEFIT  
PLAN, COMMITTEE ON COMPENSATION  
OF THE BRIGHAM SURGICAL GROUP  
FOUNDATION, INC., FIDELITY  
INVESTMENTS INSTITUTIONAL  
OPERATIONS CO., INC., FIDELITY  
MANAGEMENT TRUST CO., and  
PETER BLACK, M.D.

Defendants.

**DEFENDANTS' MOTION TO DISMISS**

Defendants Brigham and Women's Physicians Organization, Inc., Boston Neurosurgical Foundation, Inc., Brigham Surgical Group Foundation, Inc. Deferred Compensation Plan, Brigham Surgical Group Foundation, Inc. Faculty Retirement Plan, Committee on Compensation of the Brigham Surgical Group Foundation, Inc., Peter Black, M.D., Fidelity Management Trust Co., and Fidelity Investments Institutional Operations Co. (collectively, the "defendants"), hereby move the Court to dismiss plaintiff Eben Alexander, III, M.D.'s Complaint in its entirety. As set forth in greater detail in defendants' accompanying Memorandum of Law in Support of their Motion to Dismiss, the Complaint must be dismissed in its entirety because (1) plaintiff's

state law claims (Counts I-VIII and XIII) are preempted by ERISA and (2) plaintiff's ERISA claims (Counts IX-XII) are barred because he failed to exhaust his administrative remedies before filing this action. Further, plaintiff cannot state a claim against Fidelity Investments Institutional Operations Co., Inc. or Fidelity Management Trust Co. because they had no obligations to him and he is not entitled to a jury trial.

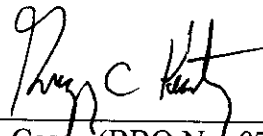
**Request for Oral Argument**

Defendants respectfully request oral argument on this Motion. As grounds for this request, defendants state that oral argument will assist the Court in clarifying and disposing of the issues raised in this Motion.

Respectfully submitted,

BRIGHAM AND WOMEN'S PHYSICIANS  
ORGANIZATION, INC., BOSTON  
NEUROSURGICAL FOUNDATION INC.,  
BRIGHAM SURGICAL GROUP FOUNDATION,  
INC. DEFERRED COMPENSATION PLAN,  
BRIGHAM SURGICAL GROUP FOUNDATION,  
INC. FACULTY RETIREMENT BENEFIT PLAN,  
COMMITTEE ON COMPENSATION OF THE  
BRIGHAM SURGICAL GROUP FOUNDATION,  
INC., PETER BLACK, M.D., FIDELITY  
INVESTMENTS INSTITUTIONAL  
OPERATIONS CO., INC. AND FIDELITY  
MANAGEMENT TRUST CO., INC.

By their attorneys,



David C. Casey (BBO No. 077260)  
Gregory C. Keating (BBO No. 564523)  
Laurie Drew Hubbard (BBO No. 651109)  
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(617) 217-2831

Dated: May 24, 2004

LOCAL RULE 7.1 CERTIFICATION

I hereby certify that on May 24, 2004, I conferred with counsel for plaintiff in a good faith but unsuccessful attempt to narrow the issues presented in this Motion.

Laurie Drew Hubbard  
Laurie Drew Hubbard

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document was served upon the attorney of record for each other party by hand on May 24, 2004.

Laurie Drew Hubbard  
Laurie Drew Hubbard

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